

**United States District Court**

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURIMETRICS, INC.,

Plaintiff,

v.

HARTFORD CASUALTY INSURANCE  
COMPANY,

Defendant.

No. C 05-00917 CW

ORDER DENYING  
DEFENDANT'S  
MOTION TO DISMISS  
AND DENYING  
DEFENDANT'S  
MOTION TO STRIKE  
PLAINTIFF'S CLAIM  
FOR PUNITIVE  
DAMAGES

Plaintiff SecuriMetrics, Inc. filed this lawsuit against Defendant Hartford Casualty Insurance Company alleging that Defendant failed to provide insurance coverage in bad faith and breach of contract. Defendant moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint for failure to state a claim upon which relief can be granted, and

1 alternatively to strike Plaintiff's request for punitive damages  
2 under Federal Rule of Civil Procedure 12(f). Plaintiff opposes  
3 the motion. This matter was heard on July 15, 2005. Having  
4 considered the papers filed by the parties and oral argument on  
5 the motion, the Court DENIES Defendant's motion to dismiss and  
6 its motion to strike Plaintiff's request for punitive damages.

7 BACKGROUND

8 Plaintiff's complaint alleges the following. Defendant  
9 issued Plaintiff a written insurance policy, Policy No. 57 SBA  
10 AT8252 (the Policy), for the period February 28, 2003 to  
11 February 28, 2004. Complaint ¶ 2. The Policy covered damages  
12 Plaintiff might incur for offenses that caused "personal or  
13 advertising injury" arising out of Plaintiff's business in the  
14 United States during the policy period. The Policy also  
15 required Defendant to defend Plaintiff in any suit seeking  
16 damages for "personal and advertising injury." Complaint ¶ 6.  
17 Plaintiff paid the Policy premium and satisfied all other  
18 requirements of the Policy. Complaint ¶ 5.

19 In or about October, 2003, Iridian Technologies, Inc.  
20 (Iridian) filed a false counterclaim against Plaintiff, alleging  
21 that Plaintiff was liable for damages because of a "personal and  
22 advertising injury" caused by Plaintiff's offenses in the United  
23 States during the Policy period. Iridian's claim was covered by  
24 the Policy. Plaintiff made a timely demand on Defendant to  
25 defend it against Iridian's counterclaim, but Defendant refused.  
26 Complaint ¶ 7. At the time of Defendant's refusal, it knew that  
27 it was obliged to defend Plaintiff, and that it was violating  
28

1 its duty of good faith and fair dealing in refusing to do so.

2 Complaint

3 ¶ 15.

4 Plaintiff alleges causes of action for breach of written  
5 contract and tortious breach of the implied covenant of good  
6 faith and fair dealing, and seeks a declaratory judgment that  
7 Defendant is obliged to defend Plaintiff.

8 LEGAL STANDARD

9 I. Dismissal Under Rule 12(b)(6)

10 A motion to dismiss for failure to state a claim will be  
11 denied unless it is "clear that no relief could be granted under  
12 any set of facts that could be proved consistent with the  
13 allegations." Falkowski v. Imation Corp., 309 F.3d 1123, 1132  
14 (9th Cir. 2002), citing Swierkiewicz v. Sorema N.A., 534 U.S.  
15 506 (2002). All material allegations in the complaint will be  
16 taken as true and construed in the light most favorable to the  
17 plaintiff. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898  
18 (9th Cir. 1986). A complaint must contain a "short and plain  
19 statement of the claim showing that the pleader is entitled to  
20 relief." Fed. R. Civ. P. 8(a). "Each averment of a pleading  
21 shall be simple, concise, and direct. No technical forms of  
22 pleading or motions are required." Fed. R. Civ. P. 8(e). These  
23 rules "do not require a claimant to set out in detail the facts  
24 upon which he bases his claim. To the contrary, all the Rules  
25 require is 'a short and plain statement of the claim' that will  
26 give the defendant fair notice of what the plaintiff's claim is  
27 and the grounds on which it rests." Conley v. Gibson, 355 U.S.

1 41, 47 (1957).

2 II. Motion to Strike Under Rule 12(f)

3 Pursuant to Federal Rule of Civil Procedure 12(f), the  
4 Court may strike from a pleading "any redundant, immaterial,  
5 impertinent or scandalous matter." Fed. R. Civ. P. 12(f). The  
6 purpose of a Rule 12(f) motion is to avoid spending time and  
7 money litigating spurious issues. Fantasy, Inc. v. Fogerty, 984  
8 F.2d 1524, 1527 (9th Cir. 1993), reversed on other grounds, 510  
9 U.S. 517 (1994). Matter is immaterial if it has no essential or  
10 important relationship to the claim for relief plead. Id.  
11 Matter is impertinent if it does not pertain and is not  
12 necessary to the issues in question in the case. Id. Rule  
13 12(f) motions to strike are "generally not granted unless it is  
14 clear that the matter sought to be stricken could have no  
15 possible bearing on the subject matter of the litigation."  
16 Rosales v. Citibank, Federal Sav. Bank, 133 F. Supp. 2d 1177,  
17 1180 (N.D. Cal. 2001).

18 DISCUSSION

19 I. Motion to Dismiss Under Rule 12(b)(6)

20 A. Breach of Contract and Declaratory Relief

21 Defendant argues that the breach of contract claim and  
22 request for declaratory judgment should be dismissed, because  
23 plaintiff did not attach a copy of the contract to the complaint  
24 or set forth the contract terms verbatim.

25 Defendant cites California State law and an unpublished  
26 district court case for the proposition that a Plaintiff  
27 pleading breach of contract must either attach a copy of the

1 contract to the complaint or set forth the relevant contract  
2 terms verbatim. See Otworth v. Southern Pacific Transportation  
3 Co., 166 Cal. App. 3d 452, 459 (1985); Campbell v. Allstate Ins.  
4 Cos., No. 95-1171, 1995 WL 376926, at \*2 (C.D. Cal. May 17,  
5 1995) (dismissing complaint under Rule 12(b)(6) for failure to  
6 attach contract, citing California State law). However,  
7 pleading is governed by Rule 8 of the Federal Rules of Civil  
8 Procedure, not by State procedural requirements. Under Federal  
9 Rule of Civil Procedure 8(a), a "short and plain statement of  
10 the claim" suffices. The forms appended to the Federal Rules of  
11 Civil Procedure note that "plaintiff may set forth the contract  
12 verbatim in the complaint or plead it, as indicated, by exhibit,  
13 or plead it according to its legal effect." Fed. R. Civ. P.  
14 Official Form 3, 12; see also 5 Charles Alan Wright & Arthur R.  
15 Miller, Federal Practice & Procedure § 1235 (2004). These forms  
16 are declared to be sufficient by Federal Rule of Civil Procedure  
17 84.

18 Here, Plaintiff has plead the "legal effect" of the  
19 contract as required by Federal Rule of Civil Procedure 8, and  
20 has alleged sufficient facts to enable Defendant to understand  
21 and respond to its claims. The complaint alleges that the  
22 Policy covered damages that Plaintiff incurred for offenses  
23 causing "personal and advertising injury," and that the Policy  
24 required Defendant to defend Plaintiff in suits seeking damages  
25 for such injury. The complaint further states that Iridian's  
26 counterclaim alleged "personal and advertising injury" and was  
27 covered by the Policy, but that Defendant refused to defend

1 Plaintiff against the counterclaim. Federal law does not  
2 require Plaintiff to recite the contract terms verbatim or to  
3 attach a copy of the contract to the complaint.

4 Therefore, Defendant's motion to dismiss the first claim  
5 for breach of contract and the request for declaratory judgment  
6 is denied.

7 B. Breach of Implied Covenant of Good Faith and Fair  
8 Dealing

9 Defendant argues that Plaintiff's claim for breach of  
10 implied covenant of good faith and fair dealing should be  
11 dismissed because Plaintiff does not allege facts necessary to  
12 support a "bad faith" claim.

13 Under California law, "[b]ad faith implies unfair dealing  
14 rather than mistaken judgment or poor prognostication." Critz  
15 v. Farmers Ins. Group, 230 Cal. App. 2d 788, 796 (1964),  
16 disapproved on other grounds, Crisci v. Security Ins. Co., 66  
17 Cal. 2d 425 (1967). Thus, "the ultimate test of liability . . .  
18 is whether the refusal to pay policy benefits was unreasonable."  
19 Austero v. National Cas. Co., 84 Cal. App. 3d 1, 32 (1978).

20 Here, Defendant argues that Plaintiff has failed to plead  
21 any facts showing the unreasonableness of Defendant's refusal to  
22 defend. However, the complaint alleges not only that Defendant  
23 erred in denying coverage, but that it "knew that it was  
24 obligated to defend SecuriMetrics, but nonetheless failed and  
25 refused to do so," and that it "knew that it was acting in  
26 violation of its duty of good faith and fair dealing."  
27 Plaintiff's allegations that Defendant knowingly refused to  
28

1 fulfill its obligations demonstrate unreasonableness, not mere  
2 "mistaken judgment," and so support a claim of bad faith.

3 Therefore, Defendant's motion to dismiss the second cause  
4 of action for breach of the implied covenant of good faith and  
5 fair dealing is denied.

6 II. Motion to Strike Under Rule 12(f)

7 Defendant contends that Plaintiff's request for punitive  
8 damages should be stricken as "redundant, immaterial,  
9 impertinent or scandalous," because Plaintiff fails to plead  
10 facts sufficient to support such a request.

11 Under the California Civil Code, punitive damages are  
12 awarded only where the "defendant has been guilty of oppression,  
13 fraud, or malice. . ." Cal. Civil Code § 3294; see also Silberg  
14 v. California Life Ins. Co., 11 Cal. 3d 452, 462-63 (1974)  
15 (holding that defendant's breach of implied covenant of good  
16 faith and fair dealing, without separate showing of intent to  
17 injure plaintiff, did not justify punitive damages award).

18 Here, Defendant claims that Plaintiff has failed to allege  
19 facts showing the "oppression, fraud or malice" required for an  
20 award of punitive damages. However, as discussed above, the  
21 complaint does not allege mere negligence by Defendant, but  
22 instead claims that Defendant "knew it was acting in violation  
23 of its duty of good faith and fair dealing" and "knew it was  
24 obligated to defend SecuriMetrics, but nonetheless failed and  
25 refused to do so." Plaintiff's request for punitive damages is  
26 supported by its allegations of Defendant's intentional refusal  
27 to defend Plaintiff, and is not "redundant, immaterial,

1 impertinent or scandalous matter."

2 Therefore, Defendant's motion to strike Plaintiff's request  
3 for punitive damages is denied.

4  
5  
6  
7  
8 CONCLUSION

9 For the foregoing reasons, Defendant's motion to dismiss  
10 the complaint and to strike Plaintiff's request for punitive  
11 damages (Docket #5) is DENIED.

12  
13 IT IS SO ORDERED.

14  
15 Dated: 7/21/05

/s/ CLAUDIA WILKEN  
CLAUDIA WILKEN  
United States District  
Judge